

ASSEMBLY, No. 1645

STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

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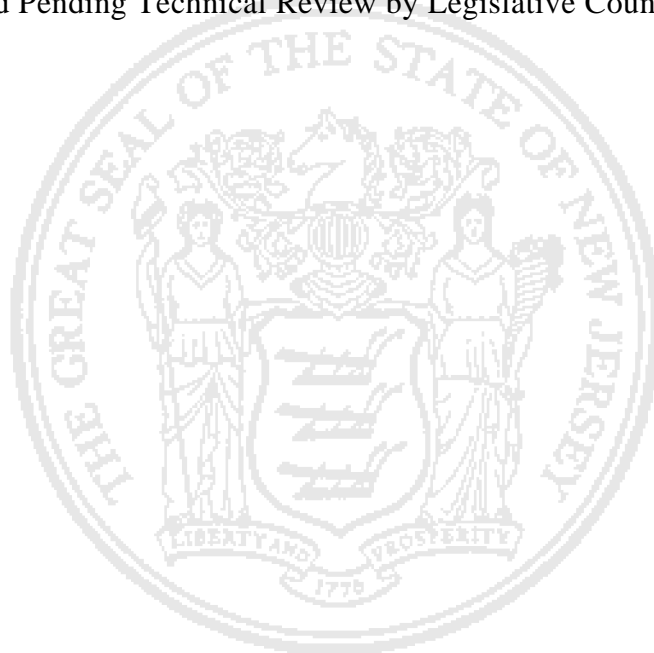
Assemblyman Blee

SYNOPSIS

Regulates Internet pharmacies and electronic prescriptions.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning Internet pharmacies and electronic prescriptions
2 and supplementing chapter 14 of Title 45 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 "Board" means the Board of Pharmacy of the State of New Jersey.

9 "Electronic prescription" means a prescription generated by means
10 of the Internet, facsimile or electronic mail.

11 "Internet" means the international network of interconnected
12 government, educational and commercial computer networks.

13 "Internet pharmacy" means a pharmacy located in the United States
14 which maintains an Internet site for the purpose of soliciting and
15 receiving prescription drug orders to be delivered to the patient by
16 means of the United States Postal Service or other delivery service.

17 "New Jersey patient" means a person who resides in New Jersey
18 and requests delivery of a prescription drug order to an address in
19 New Jersey.

20 "Practitioner" means a duly licensed physician, dentist, optometrist,
21 veterinarian, certified nurse midwife, advanced practice nurse or
22 physician assistant, or other health care practitioner licensed or
23 approved to write prescriptions pursuant to R.S.45:14-14.

24 "Prescription" or "prescription drug order" means any order for
25 drugs and related items which meets the definition of "prescription" as
26 that term is defined in R.S.45:14-14 and includes an electronic
27 prescription.

28 "Prescription drug" means a drug the label of which bears a
29 statement that it is to be dispensed only by or on the prescription of a
30 person licensed to prescribe drugs, or words of similar or like import,
31 or a drug that requires a prescription or order by an authorized
32 prescriber in order to be dispensed.

33 "Professional judgment" means judiciousness and discretion based
34 upon thorough knowledge and sound application of the specialized
35 body of knowledge peculiar to the practice of pharmacy, and an
36 understanding of the relationship of this knowledge and its application
37 to the well-being of the patient and to the judgment of the prescriber.

38
39 2. An Internet pharmacy shall not dispense or deliver prescription
40 drugs to a New Jersey patient unless the pharmacy applies to the board
41 and becomes registered to dispense and deliver prescription drugs in
42 New Jersey in accordance with this act.

43
44 3. The board shall issue registration to an Internet pharmacy that
45 satisfactorily meets the following requirements:

46 a. provides certification that it is licensed and in good standing in

- 1 the state in which it is located;
- 2 b. provides the names, titles and addresses of all principal
3 corporate officers;
- 4 c. provides the names and addresses of all of its pharmacists and
5 certification that the pharmacists are registered and in good standing
6 in the state where they work;
- 7 d. provides all other information deemed necessary by the board to
8 ensure that the Internet pharmacy is qualified to dispense or deliver
9 prescription drugs to New Jersey patients; and
- 10 e. pays any necessary application and registration fees as are
11 required by the board.

12 The registration shall be valid for a two-year period and shall be
13 renewed in accordance with procedures adopted by the board.

14

15 4. An Internet pharmacy registered in this State shall:

- 16 a. ensure that all prescription drug orders for New Jersey patients
17 are filled by pharmacists registered and in good standing in the state
18 where the prescription is filled;
- 19 b. maintain in readily-retrievable form the records of New Jersey
20 patients; and
- 21 c. provide a toll-free telephone number for consultations between
22 New Jersey patients and a registered pharmacist who has ready access
23 to the patient's records. The toll-free telephone number must be
24 answered during normal business hours for a minimum of 40 hours per
25 week. The toll-free telephone number must be on the label of every
26 prescription drug delivered to New Jersey and prominently displayed
27 on the pharmacy's Internet site.

28

29 5. An Internet pharmacy registered in this State shall not:

- 30 a. disclaim, limit or waive any liability to which a retail pharmacy
31 in New Jersey is subject;
- 32 b. disclaim, limit or waive the jurisdiction of the courts of the State
33 of New Jersey; or
- 34 c. disclaim, limit or waive the application of the laws of the State
35 of New Jersey.

36 Any disclaimer, limitation or waiver in violation of this section is
37 void.

38

39 6. a. Before dispensing or delivering prescription drugs to a New
40 Jersey patient in accordance with an electronic prescription, the
41 pharmacist or pharmacy shall ascertain that it is a legal and valid
42 prescription written by a practitioner with a bona fide existing
43 practitioner-patient relationship with the New Jersey patient. For
44 purposes of this section, a bona fide existing practitioner-patient
45 relationship means:

- 46 (1) the patient has retained the services of the practitioner,

1 (2) the practitioner has undertaken responsibility for making
2 medical judgments regarding the health of the patient and the need for
3 medical treatment,

4 (3) the practitioner has sufficient knowledge of the patient,
5 including a reliable medical history, to make a finding that the
6 prescription drug is medically indicated,

7 (4) the practitioner and patient have discussed the prescription
8 drug's benefits and risks, and

9 (5) the practitioner is available for follow-up care in order to assess
10 patient outcome and in case of an adverse reaction to the drug.

11 b. A pharmacy which violates the provisions of this section is
12 subject to a civil penalty of \$25,000 for each occurrence and a
13 pharmacist is subject to a civil penalty of \$5,000 for each occurrence.
14 The Attorney General may bring an action in accordance with the
15 "Penalty Enforcement Law of 1999, " P.L.1999, c.274 (C.2A: 58-10
16 et seq.), to enforce this section and to collect the civil penalties
17 authorized herein.

18

19 7. Whenever a pharmacist has reason to question the validity of an
20 electronic prescription for a New Jersey patient, the pharmacist shall
21 verify the prescription directly with the prescribing practitioner. The
22 pharmacist shall refuse to fill a prescription if, in his professional
23 judgment:

24 a. the prescription is outside the scope of practice of the prescriber;

25 b. the pharmacist has sufficient reason to question the validity of
26 the prescription; or

27 c. refusal to fill the prescription is necessary to protect the health
28 and welfare of the patient.

29

30 8. A violation of any of the provisions of this act shall be grounds
31 for revoking or refusing to grant registration to an Internet pharmacy
32 as provided in this act.

33 Nothing in this act shall be construed to prevent or limit the board,
34 the Director of the Division of Consumer Affairs in the Department of
35 Law and Public Safety or the Attorney General from taking any other
36 action permitted by law against an Internet pharmacy.

37

38 9. The Board of Pharmacy of the State of New Jersey, in
39 conjunction with the State Board of Medical Examiners, shall
40 promulgate, in accordance with the "Administrative Procedure Act,"
41 P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as
42 may be necessary to effectuate the purposes of this act.

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44 10. This act shall take effect on the 180th day after enactment;
45 however, the board may take such action in advance as shall be
46 necessary for the implementation of the act.

STATEMENT

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The use of Internet pharmacies is growing. Some of these businesses are legitimate, but others are designed to get around the laws that are intended to protect patients and carefully control the distribution and use of prescription drugs. This bill regulates Internet pharmacies which dispense or deliver drugs to patients living in New Jersey. The regulations are the same whether the Internet pharmacy is located inside or outside of New Jersey.

The bill requires Internet pharmacies to register with the Board of Pharmacy of the State of New Jersey prior to dispensing or delivering drugs in New Jersey and to provide certification that the Internet pharmacy and its pharmacists are licensed and in good standing in the state where the Internet pharmacy is located.

Because Internet pharmacies do not provide face-to-face consultations between a patient and a pharmacist when the drug is dispensed and because the patient's follow-up concerns or questions may be difficult to communicate, the bill requires Internet pharmacies to provide a toll-free telephone number answered during normal business hours by a pharmacist with ready access to the records of New Jersey patients.

The bill prohibits disclaimers by Internet pharmacies that would not be permitted by traditional retail pharmacies in New Jersey.

Of particular concern are the Internet pharmacies which provide prescriptions over the Internet. The bill sets forth requirements applicable to all pharmacies filling prescriptions for New Jersey patients to ensure that prescription drug orders generated by means of the Internet, facsimile or electronic mail are valid prescriptions issued by a practitioner based upon a bona fide existing practitioner-patient relationship. Violation of this section of the bill may result in a civil penalty of \$25,000 for pharmacies and \$5,000 for pharmacists.

The bill requires pharmacists who have reason to question the validity of an electronic prescription to verify the prescription with the prescribing practitioner and to refuse to fill an electronic prescription which, in his professional judgement, is not valid or safe.